

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

ALL RIGHT, TITLE AND INTEREST  
IN REAL PROPERTY AND  
APPURTENANCES LOCATED AT  
11 NORTH AVENUE EAST, CRANFORD,  
NEW JERSEY, et. al.,USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 05-CV-9548  
DATE FILED: MAY 15, 06  
STIPULATION AND ORDER  
OF INTERLOCUTORY SALE  
AND PARTIAL SETTLEMENT

Case No. 05 Civ. 9548

Defendants-in-rem.

WHEREAS, the United States of America ("Plaintiff"), by and through its counsel, Michael Garcia, United States Attorney for the Southern District of New York, of counsel Christina Paglia Bischoff, Assistant United States Attorney, filed the above-captioned action on or about November 14, 2005, seeking the forfeiture of the property known as 409 Bay Avenue, Highlands, New Jersey (the "Defendant Property"), on the grounds that, inter alia, the Defendant Property was the proceeds of, and used to facilitate, narcotics trafficking, in violation of Title 21, United States Code, Section 881;

WHEREAS, on or about November 17, 2005, the United States of America served notice upon all persons and entities believed to have an interest in the Defendant Property by personal service and certified mail, return receipt requested;

WHEREAS, the following persons and/or entities filed claims to the Defendant Property:

- a) On or about December 9, 2005, Melissa Long, as Claimant, filed a Verified Statement of Interest and Right, claiming an interest in the Defendant Property as a 60% Member of

Munson Tree, LLC, owner of the defendant 409 Bay Avenue, Highlands , New Jersey;

WHEREAS, no other person or entity has filed a claim to the Defendant Property; however, it is acknowledged that Antonio Fernandes has a 40% interest in Munson Tree, LLC,

WHEREAS, the United States and the undersigned Claimant agree that the Defendant Property should be sold to preserve its value pending a final adjudication on the merits, and whereas the interlocutory sale shall compromise and settle the Claimant's claim;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED that plaintiff, United States of America, by and through its attorney, Michael Garcia, United States Attorney for the Southern District of New York, and Christina Paglia Bischoff, Assistant United States Attorney, and the above-described Claimant, by their undersigned authorized representatives, consent to the following:

1. The legal description of the Defendant Property is: 409 Bay Avenue, Highlands, New Jersey, more particularly described in the deed dated September 11, 2003, found in Book DR-8294, Page 2121, attached hereto as Exhibit A. The title to the Defendant Property is in the name of Munson Tree, LLC.

2. The Claimant represents that, prior to receiving notice of this action, she had entered into a contract with a prospective non-party buyer who has offered to purchase the Defendant Property for a cash price of \$ 800,000.00.

3. The net proceeds from the sale of the Defendant Property will include all moneys realized from the sale of the Defendant Property, except for the following:

- a. Real estate commissions, if any;
- b. The amount due to any mortgagee, as more particularly described below;
- c. Any other real estate or property taxes which are due and owing;
- d. Insurance costs, if any;

e. Escrow fees;

f. Non-escrowed down payments;

g. Document recording fees not paid by the buyer;

h. Title fees;

I. County transfer fees;

j. Claimant's reasonable real estate attorney fees, if any, with respect to the

sale of the Defendant Property; and

k. Unpaid vendors, as per annexed Exhibit "B."

4. Plaintiff and Claimant hereby agree to substitute the net proceeds realized from the sale of the Defendant Property as a "substitute res" for the Defendant Property in this action. The cumulative net proceeds shall be remitted to the custody and control of JESS M. BERKOWITZ, ESQ., as escrow agent, as a substitute res in this case, and held pending further order of the Court.

5. Claimant agrees that she will retain custody, control, and responsibility for the Defendant Property until the interlocutory sale has been completed.

6. Claimant represents that Claimant has the sole authority to enter into this Stipulation regarding the Defendant Property, and agrees to hold harmless the United States from any other claims filed in this action by third parties alleging an interest in the Defendant Property.

7. Claimant agrees that she will assume responsibility for the payment of any lien recorded by Jerome Petit with respect to the Defendant Property, which shall not be paid from the proceeds of the interlocutory sale.

8. The parties agree that, upon the interlocutory sale, the Mortgagee will be paid all unpaid principal and interest due through the date of the closing, pursuant to the promissory note and mortgage note dated September 11, 2003 (documents attached hereto as Exhibit B), recorded on November 1, 2003, in the official records of County of Monmouth, State of New Jersey.

9. Each party agrees to bear its own costs and attorneys' fees.

10. The signature pages of this stipulation may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

11. Counsel below acknowledge that they are authorized to execute this stipulation on behalf of their clients.

Dated: New York, New York  
March \_\_\_\_\_, 2006

**MICHAEL GARCIA**

United States Attorney for the  
Southern District of New York

By: 

CHRISTINA PAGLIA BISCHOFF (P-2371)  
Assistant United States Attorney  
One St. Andrew's Plaza  
New York, New York 10007  
(212) 637-1204

**MUNSON TREE, LLC**

By:  MELISSA LONG, CLAIMANT-MEMBER

**MUNSON TREE, LLC**

By:  ANTONIO FERNANDES, MEMBER

**JESS M. BERKOWITZ, ESQ. ESCROWEE**  
401 Broadway, Suite 1510  
New York, New York 10013  
(212) 431-4453

**ORDER**

Having reviewed the foregoing Stipulation and good cause appearing,  
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

The Stipulation is So Ordered.

RMB

HONORABLE RICHARD M. BERMAN  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF NEW YORK

5/15/06